

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

)
CAPITAL POWER CORPORATION, et al.,)
)
Petitioners,)
)
v.) Case No. 23-1134
)
FEDERAL ENERGY REGULATORY) Consolidated with
COMMISSION,) No. 23-1135,
) No. 23-1136,
) No. 23-1231,
) No. 23-1233
Respondent.)
)
)

JOINT PROPOSAL ON BRIEFING FORMAT

Pursuant to this Court's July 31, 2023 Order, the parties to this consolidated case—**Petitioners** Capital Power Corporation, D.E. Shaw Renewable Investments, L.L.C., Dynegy Marketing and Trade, LLC, EDP Renewables North America LLC, Invenergy Renewables LLC, Lightsource Renewable Energy Operations, LLC, National Grid Renewables Development, LLC, NextEra Energy Resources, LLC, Rainbow Energy Center, LLC, RWE Renewable Americas, LLC, Vistra Corp.; **Respondent** Federal Energy Regulatory Commission (“FERC”); and **Intervenors** American Clean Power Association, Alliant Energy Corporate Services, Inc., AQN

Wind Projects,¹ MISO Transmission Owners,² Midcontinent Independent System Operator, Inc., Solar Energy Industries Association, and Wolverine Power Supply Cooperative, Inc.—have conferred and offer this joint proposal on a briefing format.³

A. **BACKGROUND**

This matter arose after Respondent FERC accepted a proposal by MISO Transmission Owners to eliminate all charges for the provision of reactive power within the standard power factor range and then denied—by operation of law—rehearing requests related to that order. Eleven parties petitioned this Court for review. On June 25, 2023, this Court consolidated those separate petitions.

¹ The AQN Wind Projects are the following intervenors: Deerfield Wind Energy, LLC, Deerfield Wind Energy 2, LLC, Odell Wind Farm, LLC, and Sugar Creek Wind One LLC.

² The MISO Transmission Owners as a group are the following Intervenors: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; Arkansas Electric Cooperative Corporation; City Water, Light & Power (Springfield, IL); Cooperative Energy; Dairyland Power Cooperative; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy Texas, Inc.; Great River Energy; Indianapolis Power & Light Company; Lafayette Utilities System; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); and Southern Minnesota Municipal Power Agency.

³ Counsel for Consumers Energy Company has been contacted and has stated that Consumers Energy Company does not oppose the proposed briefing format.

Following that order, thirty-six parties sought to intervene on both sides of the case.

On July 25, 2023, this Court granted all motions to intervene.

Subsequent to the filing of the original petitions for review, FERC issued an order that modifies its initial orders but that “continue[s] to reach the same result.” Out of an abundance of caution, Petitioners have filed new petitions for review of this substantive rehearing order so that those new petitions be consolidated with this case.

B. PROPOSED BRIEFING FORMAT

The parties have conferred and agree that, because Petitioners’ interests overlap in many ways, the eleven Petitioners agree to join in a single brief. Nevertheless, due to the complexity of the order on rehearing and the number of interested parties, parties believe that an expansion of the word limit by 50 percent for Petitioners’ and Respondent’s briefs is necessary and appropriate. *See* Fed. R. App. P. 32(a)(7).

Petitioners have endeavored to agree to raise a targeted set of arguments that will allow the Court to evaluate their petitions comprehensively and efficiently. Nevertheless, Petitioners require additional words because, as mostly separate parties in the underlying proceedings below, they filed separate briefs on rehearing before FERC raising distinct arguments challenging Respondent’s determinations. For example, Petitioners Vistra Corp. and Dynegy Marketing and Trade, LLC alone

raised arguments asserting that there are constitutional problems with Respondent's order. *See* Doc. No. 2005106, filed June 26, 2023. Separately, Petitioner Rainbow Energy Center, LLC raised unique arguments regarding the ability of transmission owners to file the challenged proposal. *See* Doc. No. 2005103, filed June 26, 2023. The parties thus believe that the joint briefing proposal below will best assist the Court in resolving this consolidated, multi-petitioner proceeding, without also burdening the Court with overlapping or redundant arguments in separate briefs.

In addition, the Intervenors supporting Petitioners (American Clean Power Association, AQN Wind Projects, Solar Energy Industries Association, and Wolverine Power Supply Cooperative, Inc.) agree to file a single brief. The Intervenors for Respondents (Alliant Energy Corporate Services, Inc., MISO Transmission Owners, and Midcontinent Independent System Operator, Inc.) likewise intend to file a joint brief.⁴ Intervenors for Petitioners and Intervenors for Respondents do not request a word-limit extension beyond the standard allotment. *See* D.C. Cir. Rule 28(d)(4).

Accordingly, in order to allow for full briefing on these various arguments to best assist the Court in resolving these consolidated petitions, the parties respectfully request that the Court order the following briefing format:

⁴ As mentioned, counsel for Consumers Energy Company has stated that Consumers Energy Company does not oppose the proposed briefing format.

Brief	Deadline	Word Limit
Joint Opening Brief of Petitioners	60 days from Court order setting briefing schedule	19,500
Joint Brief of Intervenors Supporting Petitioners	14 days from filing date of Petitioner's Joint Opening Brief	9,100
Respondent's Brief	60 days from filing date of Joint Brief of Intervenors Supporting Petitioners	19,500
Joint Brief of Intervenors Supporting Respondent	14 days from filing date of Respondent's Brief	9,100
Joint Reply Brief of Petitioners	40 days from filing date of Joint Brief of Intervenors Supporting Respondent	9,750
Joint Reply Brief of Intervenors Supporting Petitioners	40 days from filing date of Joint Brief of Intervenors Supporting Respondent	4,550
Joint Appendix	7 days from the filing of reply briefs	N/A
Final Briefs	7 days from the filing of the joint appendix	N/A

Pursuant to the Court's instructions, Petitioners specify the possible word allotment necessary for each issue they intend to raise as follows:

1. **6,000 words:** Whether FERC acted contrary to law by finding the proposed elimination of reactive power compensation to be "just and reasonable" in violation of its statutory obligations under the Federal Power Act.
2. **6,000 words:** Whether FERC acted arbitrarily and capriciously by, among other things, failing to consider important aspects of the matter

before it, including the impact that the proposal would have on the ability of generation resources to recover their costs, the impact on reliability, the distinct impact of the proposal on non-synchronous resources such as wind and solar resources, and the constitutional problems raised by the proposal.

3. 5,000 words: Whether FERC acted arbitrarily, capriciously, and contrary to law by finding that the MISO Transmission Owners have the right to eliminate reactive power compensation for unaffiliated generation resources, including ignoring the requirements of the Federal Power Act, assuming that generation resources have given up their right to make filings respecting their reactive power compensation, and finding that the MISO Transmission Owners had met the procedural requirements to make a filing to adjust the rates for reactive power.

4. 2,500 words: Introduction, standard of review, and statutory, factual, and procedural background.

Respectfully submitted,

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August 31, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2023, I served the foregoing document upon all counsel of record by filing a copy of the document with the Clerk through the Court's electronic docketing system.

/s/ *James E. Tysse*

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(c)(2)(B) because it contains 1,137 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word Version 2016, 14-point Times New Roman font.

/s/ James E. Tysse